

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2391 – SB 2253

March 21, 2012

SUMMARY OF AMENDMENTS (014258, 014969): Deletes all language after the enacting clause. Enacts the Tennessee Prescription Safety Act of 2012 by revising the current Controlled Substance Monitoring Act of 2002. Redefines a dispenser to include a pharmacist and a pharmacy; redefines law enforcement personnel, and defines a prescriber, health care practitioner, controlled substance, and a health care practitioner extender for the purposes of this Act. Renames the Controlled Substance Database Advisory Committee as the Controlled Substance Database Committee. Authorizes the Commissioner of Health to promulgate rules regarding sharing and dissemination of data and information in the controlled substance database. Requires all prescribers with Drug Enforcement Agency numbers who prescribe controlled substances and dispensers providing direct care to patients in Tennessee for more than 15 calendar days per year to register in the database within 30 days of database licensure requirement notification. Exempts licensed veterinarians who never prescribe a controlled substance in an amount intended to treat a non-human patient for more than 48 hours from the registering requirement. Requires any dispenser or dispenser's agent who dispenses a controlled substance to submit to the database, rather than to the Committee, information required under this part at least once every seven days, instead of within ten days following the last day of each calendar month. Authorizes the Committee to shorten the length of time dispensers are required to submit such information to the database and authorizes the dispensers to seek a hardship extension if the reporting time is shortened. Adds the following information to be reported to the database: the date the prescription was issued by the prescriber, whether the prescription was new or a refill, and source of payment. Requires the Committee to establish the electronic format in which the required information must be submitted to the database and to allow for waiver of electronic reporting for individual dispensers for whom it would cause undue hardship as determined by the Committee. Requires the Committee or its designee to review information in the database and notify the appropriate board if a violation of this Act may have occurred. Authorizes the following persons to access the confidential information in the database: a prescriber, a supervising physician of the prescriber, or a dispenser conducting medication history reviews or drug utilization reviews who are actively involved in the care of the patient; and a health care practitioner extender to the extent the information relates specifically to a current or a bona fide prospective patient to whom a controlled substance has been, is being, or is considered being prescribed or dispensed. Requires each user described above to have a separate identifiable authentication for access. Authorizes the Committee to release confidential information from the database regarding patients to law enforcement personnel, and regarding dispensers, prescribers, health care practitioner extenders, or patients to a manager of any investigations or prosecution unit of an appropriate board, and requires the Committee to release such information when ordered by a court to do so and after an appropriate order is issued regarding the information to be released to the court.

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Requires all prescribers to check the controlled substance database prior to prescribing a controlled substance to a human patient at the beginning of a new episode of treatment and at least annually when that substance remains part of the treatment. Specifies that before, dispensing, a dispenser shall have the professional responsibility to check the database, if the dispenser is aware or reasonably certain that a person is attempting to obtain a Schedule II-V controlled substance, identified by the Committee as demonstrating a potential for abuse, for fraudulent, illegal, or medically inappropriate purposes. Prescribers are not required to check if they are prescribing to hospice patients, patients who receive a non-refillable prescription for a surgical procedure, the Committee determines that they are a medical specialty and does not require a check due to the low potential for abuse recognized in that specialty, or the quantity prescribed or dispensed does not exceed an amount which is adequate for a single, seven day treatment period and does not allow a refill. Increases, from a Class A misdemeanor to a Class E felony, the offense for deceiving or failing to disclose to a physician, nurse practitioner, ancillary staff or other health care provider from whom the person obtains more than 250 units of a controlled substance or a prescription for a controlled substance that the person has received either the same controlled substance or a prescription for the same controlled substance or a controlled substance of similar therapeutic use or a prescription for a controlled substance of similar therapeutic use from another practitioner within the previous 30 days. Requires the Committee's annual report to include information about the prescribing and dispensing patterns of prescribers and dispensers. This act will expire and be of no force and effect after June 30, 2016.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$281,700/One-Time
\$230,300/Recurring
\$57,400/Incarceration*

Other Fiscal Impact – The one-time costs of \$281,700 will be funded by the Department of Mental Health using the administrative portion of the federal FY12-13 Substance Abuse Prevention and Treatment block grant.

Funding in the amount of \$28,300 for incarceration costs is included in the Governor's Proposed FY12-13 Budget.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Unchanged from the corrected fiscal note.

Assumptions applied to amendments:

- Any rulemaking required by this bill will be accomplished during regularly scheduled boards and Committee meetings and can be accommodated within existing budgetary resources.

- Any increase in expenditures for the boards that regulate and license prescribers and dispensers to accommodate additional disciplinary cases will be not significant and can be accommodated within existing resources of the affected boards.
- According to the Department of Health (DOH), the increase in registrations that would result from the requirement that all prescribers, dispensers, and physician extenders who practice in Tennessee for at least 15 days per year must register in the database and the additional authorization for one non-licensed person to be designated by a prescriber or a dispenser would require the addition of a Statistician II position to process the registration requests. This employee will also handle the increase in requests for reports from the database as a result of the requirement to disseminate information contained in the database pursuant to a court order.
- According to DOH, this bill will increase the number of waiver requests for those that cannot meet the seven day reporting requirement and would prefer to report by an alternative method of reporting. As a result, DOH will require the addition of a Licensing Technician position to process the requests.
- One-time increase in state expenditures associated with these two positions will be \$8,600 (\$5,400 office setup + \$3,200 computers).
- Recurring state expenditures associated with these two positions will increase by \$110,857 (\$61,802 salary + \$21,055 benefits and insurance + \$15,800 administrative support services + \$8,200 office lease + \$2,800 communications + \$1,200 supplies).
- According to DOH, the increase in the number of reports that result from the requirement that all prescribers and dispensers check the database prior to prescribing or dispensing a controlled substance to a patient at the beginning of a new episode of treatment and at least annually when that substance remains part of the treatment will increase the cost of hosting the database by the state's vendor.
- This will result in a one-time increase in state expenditures of \$228,600 and a recurring increase in state expenditures of \$110,400 for vendors to support the increase in patient searches and the 24-hour upload of information requirement.
- DOH expects the number of reports requested to increase to 30 million with the increase in registered prescribers, if the Commissioner, as authorized, enters into agreements that will interconnect the database with the databases in other states. Additionally, to interconnect the database with databases in other states would result in an increase in the cost of hosting the database by the state's vendor.
- One-time increase in state expenditures associated with interconnecting the database with databases in other states will be \$44,500. Recurring state expenditures will increase by \$9,000.
- The total one-time increase in state expenditures will be \$281,700 (\$8,600 + \$228,600 + \$44,500).
- The total recurring increase in state expenditures will be \$230,257 (\$110,857 + \$110,400 + \$9,000).
- Pursuant to Tenn. Code Ann. § 4-3-1011, all health-related boards are required to be self-supporting over a two-year period. As of June 30, 2011, the Division of Health Related Boards had a cumulative balance of \$10,859,982.82.
- State court convictions are 10 percent of the total convictions statewide. According to the Administrative Office of the Courts, there has been an average of two misdemeanor convictions for each of the past four years for a violation involving more than 250 units

of a controlled substance. Total convictions, including general sessions courts, are estimated to be an average of 20 per year.

- The Department of Correction (DOC) estimates 10 percent or 2 offenders a year will receive a Class E felony rather than a misdemeanor conviction as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two Class E offenders per year.
- According to DOC, the average operating cost per offender per day for calendar year 2012 is \$61.36. The average post-conviction time served for a Class E felony is 1.28 years (467.52 days) at a cost of \$28,687.03 (\$61.36 x 467.52 days). The total additional operating cost for two offenders is \$57,374.06 (\$28,687.03 x 2 offenders).
- Due to the small number of offenders and the relatively short time served, no recidivism discount has been applied for these offenses.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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